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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,834	02/25/2002	Timothy W. Exler	01-393	4641

7590 05/12/2003

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EXAMINER

RAMIREZ, RAMON O

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 05/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/082,834

Applicant(s)

EXLER, TIMOTHY W.

Examiner

RAMON O. RAMIREZ

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6) ☐ Other: \_\_\_\_\_

*Detailed Action*

This is the third Office Action corresponding to amendment filed March 3, 2003. The amendment has been entered. The request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

*Claim Objections*

Claims 1, 12 and 17 are objected to because of the phrase "opening or openable portion". This phrase refers to the portion of the item to be held not covered by the elongated element. However; that portion is not an opening or openable. Applicant should describe this as an exposed portion, or any other similar language.

*Claim Rejections - 35 USC § 103*

Claims 1-9, 11, 12, 13, and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Owens et al. (Pat. No. 5,256,131) in view of Nielsen et al.

The patent to Owens et al. show an elongated element wrapped around the periphery of an item (can 12) leaving a portion of the item exposed. The elongated element is held by hook and loop fasteners).

The patent to Nielsen et al. shows a wrap type of holder having hook and loop fasteners (18a,18b) and magnet means (22) self covered to prevent damages to metal finishes.

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It would have been obvious to one skilled in the art at the time the invention was made to have provided the device shown by Owens et al. with magnetic means as shown by Nielsen et al. to secure the holder against a magnetic surface.

The strength of the magnet used in the device, the material from which the same is being made, its dimension and the use of decoration are seen as matter of engineering choice having no patentable significance.

Claims 10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Owens et al. in view of Nielsen et al and Millis et al. (Pat. No. 4,989,811).

The patent to Millis et al. shows a holder having a bottom portion. It would have been obvious to one skilled in the art at the time the invention was made to have provided the device shown by the combination set forth above with a bottom section to better secure the item. To provide the bottom with magnet means is considered to be an obvious matter of engineering choice to secure the holder from a magnetic horizontal surface.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sanchez (5,794,843) shows another holding device wrapped around an item, leaving a section of the item exposed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner **Ramírez** at telephone number (703) 308-0748.

The examiner can be normally reached on Monday-Thursday and alternate Fridays.

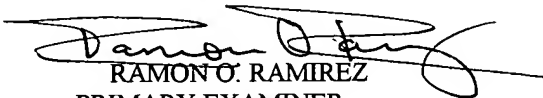
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The fax numbers for this Group are (703) 872-9326 (official papers),  
(703) 872-9327 (official after final papers) and (703) 308-3519 (for informal papers).  
Our Customer service fax number is (703) 872-9325.

Any inquiry of general nature relating to the status of this application should be  
directed to the Group receptionist whose telephone number is (703) 308-1113.

A shortened period for response to this Office Action expires THREE MONTHS  
from the mailing date of this action.

R.O.RAMIREZ  
May 5, 2003

  
RAMON O. RAMIREZ  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3600  
ART UNIT 3632